UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,567	11/30/2000	Karen Ann Bradley	50325-0504	6744

29989   7590   08/16/2004

HICKMAN PALERMO TRUONG & BECKER, LLP
1600 WILLOW STREET
SAN JOSE, CA 95125

EXAMINER
LIN, KENNY S

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/727,567	BRADLEY ET AL.
	Examiner	Art Unit	
	Kenny Lin	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 May 2004.*

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-8,10-14 and 16-20* is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-8,10-14 and 16-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All b)☐ Some * c)☐ None of:

　　　　1.☐ Certified copies of the priority documents have been received.

　　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *5/24/2004*.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____ .

DETAILED ACTION

1.   Claims 1-20 are presented for examination. Claims 3, 9 and 15 are cancelled.

2.   The IDS submitted on 5/24/2004 has been considered.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-2, 6-8, 12-14 and 18-20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Shurmer et al (hereinafter Shurmer), US 5,974,237, in view of Ellesson

et al (hereinafter Ellesson), US 6,459,682.

5.   Shurmer was cited in the previous office action. Ellesson is cited by the applicant

in the IDS received on 5/24/2004.

6.   As per claims 1, 7 and 19, Shurmer taught the invention substantially as claimed

including a method for monitoring a level of network service offered by a service

provider, the method comprising the computer-implemented steps of:

    a. data defining one or more tests for monitoring the level of network service being provided to a particular customer (col.1, lines 54-55, col.16, lines 39-43, col.20, lines 52-56);

    b. And information defining a specific time range for when the one or more tests are to be performed (col.16, lines 35-39);

    c. Distributing the one or more tests to one or more agents, wherein the one or more agents are configured to communicate with devices associated with the network (col.1, lines 54-58, 64-67, col.2, lines 28-35, col.16, lines 39-43, col.17, lines 48-51, col.20, lines 52-56); and

    d. Configuring the devices to perform the one or more tests within the specific time range (col.13, lines 19-28, col.16, lines 35-39).

7.   Shurmer further taught to collect operational parameter into monitoring session (col.2, lines 52-64). Shurmer did not specifically teach receiving a schema that provides a configuration for monitoring a service level contract, wherein the schema comprises data. Ellesson taught to use schemes to provide configuration for monitoring a service level contract (col.2, lines 51-60, col.10, lines 30-41). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Shurmer and Ellesson because Ellesson's teaching of using schema and directory help Shurmer's method to collect all the operational parameters, components and elements in preparing the network monitoring (Shurmer, col.20, lines 52-57).

8.   As per claim 13, Shurmer taught the invention substantially as claimed including

a network device configured for monitoring a level of network service offered b y a

service provider, comprising:

    a.   A network interface (col.5, lines 37-38);

    b.   A processor coupled to the network interface and receiving information

        from the network interface (col.5, lines 27-45);

    c.   A computer-readable medium accessible by the processor and comprising

        one or more sequences of instructions (inherently known feature) which,

        when executed by the processor, cause the processor to carry out the steps

        of:

           i.   data defining one or more tests for monitoring the level of network

                service that is being provided to a particular customer (col.1, lines

                54-55, col.16, lines 39-43, col.20, lines 52-56) and information

                defining a specific time range for when the one or more tests are to

                be performed (col.16, lines 35-39);

          ii.   Distributing the one or more tests to one or more agents, wherein

                the one or more agents are configured to communicate with

                devices associated with the network (col.1, lines 54-58, 64-67,

                col.16, lines 39-43, col.20, lines 52-56); and

          iii.   Configuring the devices to perform the one or more tests within the

                specific time range (col.13, lines 19-28, col.16, lines 35-39).

9.   Shurmer further taught to collect operational parameter into monitoring session
(col.2, lines 52-64). Shurmer did not specifically teach receiving a schema that provides
a configuration for monitoring a service level contract, wherein the schema comprises
data. Ellesson taught to use schemes to provide configuration for monitoring a service
level contract (col.2, lines 51-60, col.10, lines 30-41). It would have been obvious to one
of ordinary skill in the art at the time the invention was made to combine the teachings of
Shurmer and Ellesson because Ellesson's teaching of using schema and directory help
Shurmer's method to collect all the operational parameters, components and elements in
preparing the network monitoring (Shurmer, col.20, lines 52-57).

10.   As per claims 2, 8, 14 and 20, Shurmer and Ellesson taught the invention
substantially as claimed in claims 1, 7, 13 and 19. Shurmer further taught to include the
steps of:

        a. Receiving result information based on the devices performing the one or
            more tests (col.20, lines 48-52, 59-67); and
        b. Creating and storing reporting information that indicates whether the
            customer is receiving, during the specific time range, the level of network
            service offered by the service provider (col.20, lines 59-67, col.21, lines 1-
            3, col.23, lines 46-56).

11.   As per claims 6, 12 and 18, Shurmer and Ellesson taught the invention
substantially as claimed in claims 1, 7 and 13. Shurmer further taught wherein the step of

configuring the devices includes the step of configuring the devices to perform the one or

more tests only within the specific time range (col.13, lines 19-28, col.16, lines 35-39).

12.   Claims 4, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Shurmer and Ellesson as applied to claims 1, 7, and 13 above, and further in view of

Ballantyne et al (hereinafter Ballantyne), US 6,687,873.

13.   Ballantyne was cited in the previous office action.

14.   As per claims 4, 10 and 16, Shurmer and Ellesson taught the invention

substantially as claimed in claims 1, 7 and 13. Ellesson further taught that wherein the

schema models the service level contract (col.2, lines 51-60, col.10, lines 30-41). It

would have been obvious to one of ordinary skill in the art at the time the invention was

made to combine the teachings of Shurmer and Ellesson because Ellesson's teaching of

generating a schema defining a service level contract help Shurmer's method to define

the one or more tests for monitoring the level of network according to what the customers

stated in the contract. Shurmer and Ellesson did not specifically teach said schema being

based on Extensible Markup Language. However, Ballantyne taught to create schema in

XML format (col.2, lines 44-46, col.6, lines 10-26). It would have been obvious to one

of ordinary skill in the art at the time the invention was made to combine the teachings of

Shurmer, Ellesson and Ballantyne because Ballantyne's teaching of creating reports in

XML format help Shurmer and Ellesson's method to create schema which defines a

service level contract in XML format.

15.   Claims 5, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Shurmer and Ellesson as applied to claims 1, 7, and 13 above, and further in view of

Schuster et al (hereinafter Schuster), US 6,363,053.

16.   Schuster was cited in the previous office action.

17.   As per claims 5, 11 and 17, Shurmer and Ellesson taught the invention

substantially as claimed in claims 1, 7 and 13. Shurmer further taught to allow users to

define specific times for monitoring the level of service that is being provided by the

service provider (col.13, lines 19-28, col.16, lines 35-39). Ellesson further taught to use

schemes to provide configuration for monitoring a service level contract (col.2, lines 51-

60, col.10, lines 30-41). It would have been obvious to one of ordinary skill in the art at

the time the invention was made to combine the teachings of Shurmer and Ellesson

because Ellesson's teaching of generating a schema defining a service level contract help

Shurmer's method to define the one or more tests for monitoring the level of network

according to what the customers stated in the contract. Shurmer and Ellesson did not

specifically teach to further comprising the steps of:

    a. Generating, at a server, interface data for defining the schema for

        monitoring the service level contract; and

    b. Communicating the interface data to a client that is remote form said

        server, wherein the interface data allows users to define specific times for

        monitoring.

18.   Schuster taught to generate, at a server, interface data for defining a service level

contract (col.1, lines 61-67, col.2, lines 1-18, 62-65, col.5, lines 8-12) and to

communicate the interface data to a client that is remote from the server (col.5, lines 8-

12). It would have been obvious to one of ordinary skill in the art at the time the

invention was made to combine the teachings of Shurmer, Ellesson and Schuster because

Schuster's teaching of generating interface data defining a service level contract help

Shurmer and Ellesson's method to define the one or more tests for monitoring the level of

network into schemes according to a specific time frame that the customers stated in the

contract. It would have been obvious to one of ordinary skill in the art at the time the

invention was made to combine the teachings of Shurmer, Ellesson and Schuster because

Schuster's teaching of communicating the interface data allows Shurmer's users to define

specific times for monitoring the level of service using the interface data (col.13, lines

19-28, col.16, lines 35-39).

Response to Amendment

19.   Applicant's arguments with respect to claims 1-2, 4-8, 10-14 and 16-20 have been

considered but are moot in view of the new ground(s) of rejection.

Conclusion

20.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than

SIX MONTHS from the date of this final action.

21.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kenny Lin whose telephone number is (703)305-0438.

The examiner can normally be reached on 8 AM to 5 PM Tuesday to Friday and every

other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Follansbee can be reached on (703)305-8498. Additionally, the fax

numbers for Group 2100 are as follows:

Official Responses: (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (703)305-

3900.

ksl
August 9, 2004

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100